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14
15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

18 CARLOS VICTORINO, *et al.*,
19 Plaintiffs,
20 v.
21 FCA US LLC, a Delaware limited
22 liability company,
23 Defendant.

Case No.: 3:16-CV-01617-GPC(JLB)
Judge: Hon. Gonzalo P. Curiel

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION IN LIMINE TO
EXCLUDE ARGUMENT OR
EVIDENCE REFERENCING
IMPROPER LEGAL STANDARDS
[NO. 3 of 5]**

Complaint Filed: June 24, 2016
Trial Date: October 11, 2022

Date: August 19, 2022
Time: 1:30 pm
Dept: 2D

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on August 19, 2022, at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 2D of the above-entitled Court, located at the Edward J. Schwartz U.S. Courthouse, 221 W. Broadway, San Diego, California 92101, Plaintiff will move this Court for an Order granting Plaintiff's Motion in Limine No. 3 regarding Defendant's proffered defenses to Plaintiff's claim for breach of implied warranty.

This Motion is based on this Notice of Motion, the supporting Memorandum of Points and Authorities, all pleadings and records on file in this action, and any other arguments and evidence presented to the Court.

Dated: August 5, 2022

Respectfully submitted,

CAPSTONE LAW APC

By: /s/ Laura E. Goolsby
Tarek H. Zohdy
Cody R. Padgett
Laura E. Goolsby

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Paul R. Kiesel
Jeffrey A. Koncius
Kevin D. Zipser

Attorneys for Plaintiff and the Class

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff anticipates that Defendant FCA US, LLC (“FCA”) will attempt to introduce argument or evidence relating to an improper legal standard as an affirmative defense. Plaintiff contends that the proffered defense is irrelevant and, as such, any argument or evidence relating to such defense is inadmissible under the Federal Rules. Thus, it should be excluded.

II. EVIDENCE OR ARGUMENT RELATING TO LEGAL STANDARDS NOT AT ISSUE SHOULD BE EXCLUDED

California’s Song-Beverly Act imposes an implied warranty of merchantability for certain consumer goods, including the Class Vehicles at issue here. Liability for a breach of implied warranty under the Song-Beverly Act arises upon a showing of the following: (1) the plaintiff purchased or leased a vehicle manufactured by the defendant; (2) at the time of purchase, the defendant was in the business of manufacturing such vehicles; and (3) the vehicles were not (i) of merchantable quality; or (ii) fit for their ordinary or intended purpose. *Mexia v. Rinker Boat Co., Inc.*, 174 Cal. App. 4th 1297, 1303 (2009); *see also* California Civil Jury Instruction 3210. There is no requirement that any alleged defect substantially impair the use, value, or safety of the vehicle. Such language can *only* be found in the Act’s prohibitions against breaches of *express* warranty. *See* Cal. Civ. Code § 1794(a). The implied warranty of merchantability is independent of the express warranty and, as such, the legal standards applicable to each are separate and discrete. *See Mocek v. Alfa Leisure, Inc.*, 114 Cal. App. 4th 402, 407 (2003) (concluding that the statute’s express warranty provisions “[do] not apply to the breach of an implied warranty of merchantability.”).

Despite this clear delineation, however, FCA intends to submit argument and/or evidence of a lack of substantial impairment as a defense to Plaintiff’s implied warranty claim. [Dkt. No. 393 (“The alleged defect does not substantially impair the

1 use, value, or safety of the vehicles. Plaintiff and class members have not stopped
 2 using their vehicles, and/or have driven the vehicles for years and thousands of miles
 3 without incident.”)]. Whether or not substantial impairment to use exists or, indeed,
 4 whether Plaintiff continued to use his Class Vehicle is irrelevant to the legal claim
 5 at issue. *See, e.g., Ibrahim v. Ford Motor Co.*, 214 Cal. App. 3d 878, 898 (1989)
 6 (“purchasers of unsatisfactory vehicles may be compelled to continue using them
 7 due to the financial burden to securing alternative means of transport for a substantial
 8 period of time.”). Any argument or evidence regarding substantial impairment and
 9 continued vehicle use will only serve to confuse and mislead the fact finder with
 10 regard to the statutory requirements for breach of implied warranty. Further, such
 11 evidence is highly prejudicial because a jury may view the fact that Plaintiff
 12 continued to use the vehicle as a reason to deny an otherwise valid claim. Thus, any
 13 mention of substantial impairment or Plaintiff's continued use of his vehicle should
 14 be excluded.

15 **III. CONCLUSION**

16 For the foregoing reasons, Plaintiff respectfully requests that the Court grant
 17 his Motion in Limine to exclude argument or evidence regarding FCA’s improper
 18 affirmative defense.

19 Dated: August 5, 2022

Respectfully submitted,

CAPSTONE LAW APC

By: /s/ Laura E. Goolsby

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Attorneys for Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2022, I electronically filed the foregoing PLAINTIFF'S NOTICE OF MOTION AND MOTION IN LIMINE TO EXCLUDE ARGUMENT OR EVIDENCE REFERENCING IMPROPER LEGAL STANDARDS with the Clerk of Court using the CM/ECF system and I served a copy of the foregoing on all counsel for all parties, via the CM/ECF system, to all counsel of record in this matter, in accordance with Fed. R. Civ. Proc. 5(b)(2)(E).

/s/ Laura E. Goolsby

Laura E. Goolsby